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9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA
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12 IMELDA APARICIO, individually) CASE NO. 2:18-cv-06312-AB-KS
13 and on behalf of all others similarly)
14 situated,) **STIPULATED PROTECTIVE**
15) **ORDER**
16 Plaintiffs,)
17 v.)
18 USCB, INC., and DOES 1-10,)
19 inclusive,)
20 Defendant)
21)
22

23 1. A. PURPOSES AND LIMITATIONS

24 Discovery in this action is likely to involve production of confidential,
25 proprietary, or private information for which special protection from public
26 disclosure and from use for any purpose other than prosecuting this litigation may
27 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
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1 enter the following Stipulated Protective Order. The parties acknowledge that this
2 Order does not confer blanket protections on all disclosures or responses to
3 discovery and that the protection it affords from public disclosure and use extends
4 only to the limited information or items that are entitled to confidential treatment
5 under the applicable legal principles. The parties further acknowledge, as set forth
6 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
7 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
8 procedures that must be followed and the standards that will be applied when a
9 party seeks permission from the court to file material under seal.

10 B. GOOD CAUSE STATEMENT

11 This action is likely to involve trade secrets, confidential and proprietary
12 policy and procedure information and other valuable research, development,
13 commercial, financial, technical and/or proprietary information and private and
14 sensitive financial information of alleged putative class members (likely debtors).
15 In particular production of documents in this case will involve production of
16 confidential medical information of third parties (allegedly class members). In this
17 regard, special protection from public disclosure and from use for any purpose
18 other than prosecution of this action is warranted. Such confidential and
19 proprietary materials and information consist of, among other things, confidential
20 business or financial information, information regarding confidential business
21 practices, or other confidential research, development, or commercial information
22 (including information implicating privacy rights of third parties), information
23 otherwise generally unavailable to the public, or which may be privileged or
24 otherwise protected from disclosure under state or federal statutes, court rules, case
25 decisions, or common law. Accordingly, to expedite the flow of information, to
26 facilitate the prompt resolution of disputes over confidentiality of discovery
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1 materials, to adequately protect information the parties are entitled to keep
2 confidential, to ensure that the parties are permitted reasonable necessary uses of
3 such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so designated without a good faith belief that it has been maintained in
8 a confidential, non-public manner, and there is good cause why it should not be
9 part of the public record of this case.
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12 2. DEFINITIONS

13 2.1 Action: this pending federal lawsuit.

14 2.2 Challenging Party: a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
19 the Good Cause Statement.
20

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
22 their support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information
24 or items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless
27 of the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this
7 Action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association
10 or other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action
13 and have appeared in this Action on behalf of that party or are affiliated with a law
14 firm that has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
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1 Material from a Producing Party.

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3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the
10 trial judge. This Order does not govern the use of Protected Material at trial.

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12 4. DURATION

13 Once a case proceeds to trial, all of the
14 information that was designated as confidential or maintained pursuant to this
15 protective order becomes public and will be presumptively available to all
16 members of the public, including the press, unless compelling reasons supported
17 by specific factual findings to proceed otherwise are made to the trial judge in
18 advance of the trial. *See Kamakana v. City and County of Honolulu*, 447 F.3d
19 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing
20 documents produced in discovery from “compelling reasons” standard when
21 merits-related documents are part of court record). Accordingly, the terms of this
22 protective order do not extend beyond the commencement of the trial.

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25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under
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1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate
3 for protection only those parts of material, documents, items or oral or written
4 communications that qualify so that other portions of the material, documents,
5 items or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

7 Mass, indiscriminate or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber the case development process or to
10 impose unnecessary expenses and burdens on other parties) may expose the
11 Designating Party to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.
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21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the legend
25 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
26 contains protected material. If only a portion of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the protected portion(s)
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(e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identifies the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the

provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

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7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated
6 “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
8 well as employees of said Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of
11 the Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses, and attorneys for witnesses, in
23 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
24 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
25 they will not be permitted to keep any confidential information unless they sign the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
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1 agreed by the Designating Party or ordered by the court. Pages of transcribed
2 deposition testimony or exhibits to depositions that reveal Protected Material may
3 be separately bound by the court reporter and may not be disclosed to anyone
4 except as permitted under this Stipulated Protective Order; and

5 (i) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

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8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall
18 include a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served
22 with the subpoena or court order shall not produce any information designated in
23 this action as “CONFIDENTIAL” before a determination by the court from which
24 the subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material and nothing in these provisions
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1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

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4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a
7 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
8 produced by Non-Parties in connection with this litigation is protected by the
9 remedies and relief provided by this Order. Nothing in these provisions should be
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party’s confidential information in its possession, and the Party is
13 subject to an agreement with the Non-Party not to produce the Non-Party’s
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-
16 Party that some or all of the information requested is subject to a confidentiality
17 agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated
19 Protective Order in this Action, the relevant discovery request(s), and a reasonably
20 specific description of the information requested; and

21 (3) make the information requested available for inspection by the
22 Non-Party, if requested.

23 (c) If the Non-Party fails to seek a protective order from this court within
24 14 days of receiving the notice and accompanying information, the Receiving
25 Party may produce the Non-Party’s confidential information responsive to the
26 discovery request. If the Non-Party timely seeks a protective order, the Receiving
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1 Party shall not produce any information in its possession or control that is subject
2 to the confidentiality agreement with the Non-Party before a determination by the
3 court. Absent a court order to the contrary, the Non-Party shall bear the burden
4 and expense of seeking protection in this court of its Protected Material.
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6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
8 disclosed Protected Material to any person or in any circumstance not authorized
9 under this Stipulated Protective Order, the Receiving Party must immediately (a)
10 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
11 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
12 the person or persons to whom unauthorized disclosures were made of all the terms
13 of this Order, and (d) request such person or persons to execute the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
15 A.
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17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
18 PROTECTED MATERIAL
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20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other
22 protection, the obligations of the Receiving Parties are those set forth in Federal
23 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
24 whatever procedure may be established in an e-discovery order that provides for
25 production without prior privilege review. Pursuant to Federal Rule of Evidence
26 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
27 of a communication or information covered by the attorney-client privilege or
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1 work product protection, the parties may incorporate their agreement in the
2 stipulated protective order submitted to the court.

3 If a Producing Party inadvertently discloses information in connection with
4 the pending litigation to another Party that the Producing Party thereafter claims to
5 be privileged or protected by the attorney-client privilege or attorney work product
6 protection (“Disclosed Protected Information”), the disclosure of the Disclosed
7 Protected Information shall not constitute or be deemed a waiver or forfeiture of
8 any claim of privilege or work product protection that the Producing Party would
9 otherwise be entitled to assert with respect to the Disclosed Protected Information
10 and its subject matter in this proceeding or in any other federal or state proceeding.
11 A Producing Party may assert in writing attorney-client privilege or work product
12 protection with respect to Disclosed Protected Information. The Receiving Party
13 must—unless it contests the claim of attorney-client privilege or work product
14 protection—within five business days of receipt of that writing, (i) return or
15 destroy all copies of the Disclosed Protected Information, and (ii) provide a
16 certification of counsel that all of the Disclosed Protected Information has been
17 returned or destroyed.

18 If the Receiving Party contests the claim of attorney-client privilege, within five
19 business days after assertion of attorney-client privilege or work product protection
20 with respect to Disclosed Protected Information, the Producing Party must produce
21 a privilege log with respect to the Disclosed Protected Information.

22 If the Receiving Party still contests the claim of attorney-client privilege
23 after receipt of the privilege log, the Receiving Party must then—within five
24 business days of receipt of the privilege log— initiate the dispute resolution
25 process under Local Rule 37.1 et seq. to move the Court for an Order compelling
26 disclosure of the information claimed as not privileged (a “Disclosure Motion”).
27 The Receiving Party must seek to file the Disclosure Motion under seal and it must
28 not assert as a ground for compelling disclosure the fact or circumstances of the

1 disclosure. Pending resolution of the Disclosure Motion, the Receiving Party must
2 not use the challenged information in any way or disclose it to any person other
3 than those required by law to be served with a copy of the sealed Disclosure
4 Motion. The parties may stipulate to extend the contemplated time periods set
5 forth in this Paragraph.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of
8 any person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order, no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in
12 this Stipulated Protective Order. Similarly, no Party waives any right to object on
13 any ground to use in evidence of any of the material covered by this Protective
14 Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Local Civil Rule 79-5. Protected Material
17 may only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information
20 in the public record unless otherwise instructed by the court.
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23 13. FINAL DISPOSITION

24 After the final disposition of this Action, as defined in paragraph 4, within
25 60 days of a written request by the Designating Party, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,
28 compilations, summaries, and any other format reproducing or capturing any of the

1 Protected Material. Whether the Protected Material is returned or destroyed, the
2 Receiving Party must submit a written certification to the Producing Party (and, if
3 not the same person or entity, to the Designating Party) by the 60 day deadline that
4 (1) identifies (by category, where appropriate) all the Protected Material that was
5 returned or destroyed and (2) affirms that the Receiving Party has not retained any
6 copies, abstracts, compilations, summaries or any other format reproducing or
7 capturing any of the Protected Material. Notwithstanding this provision, Counsel
8 are entitled to retain an archival copy of all pleadings, motion papers, trial,
9 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
10 and trial exhibits, expert reports, attorney work product, and consultant and expert
11 work product, even if such materials contain Protected Material. Any such
12 archival copies that contain or constitute Protected Material remain subject to this
13 Protective Order as set forth in Section 4 (DURATION).
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16 14. VIOLATION

17 Any violation of this Order may be punished by appropriate measures including,
18 without limitation, contempt proceedings and/or monetary sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED March 27, 2019

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5 /s/ Todd M. Friedman

6 Todd M. Friedman
7 Attorneys for Plaintiff

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9 DATED: March 27, 2019

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11 /s/David J. Kaminski

12 David J. Kaminski
13
14 Attorneys for Defendant

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16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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18 DATED: March 28, 2019

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21 KAREN L. STEVENSON
22 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety
6 and understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California on [date] in the case of _____
8 *Imelda Aparicio v. USCB, Inc.* Case No. **2:18-cv-06312-AB-KSI** agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment in
11 the nature of contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person or
13 entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for enforcing the terms of this Stipulated Protective Order,
16 even if such enforcement proceedings occur after termination of this action. I hereby
17 appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or
20 any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____